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Administrative Tribunal

Distr.
LIMITED

AT/DEC/739
22 November 1995

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 739

Case No. 815: CHAKRAVARTI

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Jerome Ackerman, President; Mr. Luis de
Posadas Montero, Vice-President; Mr. Mikuin Leliel Balanda;

Whereas, on 1 June 1994, Ashok Chakravarti, a former staff
member of the United Nations, filed an application that did not
fulfil all the formal requirements of article 7 of the Rules of the
Tribunal;

Whereas, on 25 September 1994, the Applicant, after making
the necessary corrections, again filed an application requesting the
Tribunal to order:

"A payment of US\$ 50,000 from UNDTCD/UNDDSMS [UN Department
of Technical Cooperation for Development/UN Department of
Development Support and Management Services], as indemnity
for harassment, mental and financial strain, and
psychological injury.

... the Secretary-General that disciplinary action be taken
against those officials in the United Nations who were
responsible for the events against me."

Whereas the Respondent filed his answer on 22 December 1994;

Whereas the Applicant filed written observations on
7 February 1995;

Whereas, on 16 October 1995, the Applicant submitted additional observations, on which the Respondent submitted comments on 27 October 1995;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 23 September 1980, as an Economist/Planner at the L-3 level with the United Nations Commission on Trade and Development. He held a number of fixed-term appointments in Bhutan, Somalia, Geneva and Gambia. From 22 September 1984 to 31 May 1987, he worked for UNDP, as Advisor in Harare, Zimbabwe. With effect from 2 August 1987, the Applicant served on a one year fixed-term appointment in Malawi with the Technical Assistance Recruitment and Administration Service (TARAS), as an Advisor on Aid Coordination. His appointment was renewed several times, through December 1990, when he separated from service and returned to his home country, India. The Applicant re-entered the service of TARAS in Malawi, on a six month fixed-term appointment, with effect from 27 February 1991. This appointment was renewed through 26 February 1992, when the Applicant separated from service.

Due to an oversight by TCD, the offer of the appointment starting on 27 February 1991 was not made until 17 April 1991. On 7 May 1991, the Applicant signed a six-month contract, with effect from 27 February 1991.

In a memorandum dated 23 July 1991, the Chief, TARAS, conveyed a request from the Applicant to the Senior Personnel Officer, Office for Human Resources Management (OHRM), for an exception to staff rule 209.8(m) which would have required that his repatriation grant in respect of his prior service in Malawi, which he completed in December 1990, be paid to him in local currency. The Applicant had requested that he be paid a repatriation grant and his final pay entitlements in convertible currency.

The Applicant did not receive salary advances until August 1991, and he was not placed on the payroll until November 1991. By cable, dated 13 August 1991, the Chief of TARAS expressed to the Applicant his regret over the delay and consequent inconvenience. He noted:

"THE MAIN CAUSE OF THESE DELAYS LIES IN THE LIQUIDATION OF YOUR PAST SEVERANCE PAYMENTS RELATED TO PRIOR ASSIGNMENTS. SUCH DELAYS WOULD HAVE BEEN AVOIDED HAD YOU ACCEPTED OUR PROPOSAL TO MAINTAIN CONTINUITY OF SERVICE BY BRIDGING THE SMALL GAP OF TWO MONTHS BY MEANS OF SPECIAL LEAVE. DELAYS WERE FURTHER COMPOUNDED AS A RESULT OF YOUR REQUEST FOR PAYMENT IN A CURRENCY OTHER THAN THAT AUTHORIZED. HOWEVER, TO AVOID INCONVENIENCE TO YOURSELF, OUR SERVICE DID RELEASE, THROUGH SALARY ADVANCES, PAYMENTS FOR MARCH THROUGH JUNE. WE SHALL CONTINUE ASKING THE MONTHLY RELEASE OF YOUR SALARY UNTIL ALL PAYMENTS RELATED TO YOUR FIRST ASSIGNMENT ARE FINALIZED."

In a memorandum dated 19 November 1991, the Senior Personnel Officer, OHRM, informed the Chief, TARAS, that the Applicant's repatriation grant could not be authorized, as he had not furnished satisfactory evidence of relocation in a country other than his last duty station. He stated that the Applicant's repatriation grant would be "held in escrow until such a time as he separates from his current assignment and relocates away from Malawi." With regard to his other entitlements, on 10 January 1992, the Chief, Compensation and Classification Service, OHRM, authorized payment to the Applicant in dollars "as an exceptional measure." He also confirmed that the Applicant's repatriation grant should be paid "in the currency of the established country of residence."

On 1 October 1991, and again on 5 December 1991, the Applicant wrote to the Secretary-General requesting administrative review of the decision "not [to] accept the validity of my repatriation after the completion of my previous assignment ..." and review of a series of administrative rules "because in effect they violate our conditions of service and are arbitrary ...".

On 14 January 1992, the Applicant lodged an appeal with the Joint Appeals Board (JAB). On 5 November 1992, the JAB adopted its report. Its findings and recommendations read as follows:

"Findings and Recommendations

23. The Panel finds that:

(a) At the end of his first assignment in Malawi, Appellant was entitled to the payment of repatriation grant in Zimbabwe currency;

(b) He was not entitled to payment of that grant in US dollars; and

(c) He is entitled to the payment of an indemnity for the late payment of his salary, in an amount approximately equal to the interest he would have been charged on a loan in an amount equivalent to his monthly salary for the period from the end of the first month of employment until the payment of the first advance;

24. The Panel recommends, therefore, that:

(a) Since Respondent has acknowledged his entitlement to repatriation grant, Appellant be given the choice of being paid it in either Indian or Zimbabwe currency, and

(b) He be paid an indemnity of US\$500.00."

On 23 November 1992, the Director of Personnel transmitted to the Applicant a copy of the JAB report and informed him that the Secretary-General had decided, "in accordance with the recommendation of the Board, that you be paid repatriation grant in one of either currency of India or Zimbabwe and that you be paid an indemnity in the amount of US\$500 to compensate for delays in payment of your salary."

On 25 September 1994, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. Non-payment of the Applicant's monthly salary constituted non-observance of the conditions of service under his contract which commenced on 27 February 1991. Events which occurred prior to this appointment have no relevance to the fulfillment of these contractual obligations.

2. The compensation of US \$500 awarded to the Applicant by the JAB is grossly inadequate to compensate him for the mental and financial strain caused by the non-observance of his conditions of service.

3. Disciplinary proceedings should be instituted against those responsible for the delay in payment of the Applicant's salary.

Whereas the Respondent's principal contentions are:

1. The delay in payment of the Applicant's salary was partially caused by difficulties in the calculation of his entitlements under a prior contract.

2. The award of damages recommended by the JAB and accepted by the Secretary-General was reasonable in the circumstances. The fact that the Applicant considers he should be awarded a greater sum is no ground for appeal.

3. The Applicant's terms and conditions of employment do not include the right to have disciplinary proceedings instituted against third parties.

The Tribunal, having deliberated from 2 to 22 November 1995, now pronounces the following judgement:

- I. The Applicant challenges the Respondent's decision regarding various issues connected with the winding up of his first assignment which ended in December 1990, as well as with the non-payment of his

monthly salary and allowances due to him under his new contract, which became effective on 27 February 1991.

II. The Applicant's claims were first submitted to the Joint Appeals Board (JAB), which recommended that the Applicant be given the choice "of being paid [his repatriation grant] in either Indian or Zimbabwe currency" and "an indemnity of US\$500.00" for the late payment of his salary.

III. The Secretary-General decided to accept the JAB's recommendations and so informed the Applicant on 23 November 1992. Not satisfied with this decision, the Applicant appealed it. He claims compensation substantially higher than the one granted and also requests that "disciplinary action be taken against those officials in the United Nations who were responsible for the events ..."

IV. The Respondent, in his answer, argues that inasmuch as the award of damages recommended by the JAB has been accepted by the Secretary-General, the "fact that Applicant considers that he should be awarded a greater sum of damages is not a proper ground of appeal". The Respondent adds other considerations pointing out that "the Tribunal should encourage the settlement of disputes by indicating that, if the Respondent accepts a recommendation of a JAB to pay reasonable damages to an applicant, the Tribunal will only interfere with such a decision if it is wrong in law, mistaken in fact or improperly motivated."

V. The Tribunal will refrain from commenting on this policy matter. It will turn its attention first to the issue of the receivability of the Applicant's appeal. Article 7 of the Tribunal's Statute governs receivability. Paragraph 3 provides: "In the event that the recommendations made by the joint body and

accepted by the Secretary-General are unfavourable to the applicant, and in so far as this is the case, the application shall be receivable, unless the joint body unanimously considers that it is frivolous."

VI. The Tribunal finds that this text cannot be used as grounds for claiming that the application is not receivable. In the Tribunal's view, the right of staff members to appeal is fundamental and it may not be curtailed unless a specific text clearly so provides, as, for instance, in the last clause of article 7.3. In the present case, no text bars the Applicant from coming before the Tribunal.

VII. The Respondent relies on the fact that the JAB has accepted the Applicant's views and that the Secretary-General has, in turn, accepted the JAB's recommendation. On these grounds, the Respondent concludes that the outcome has not been unfavourable to the Applicant, and that, therefore, article 7, paragraph 3 is not applicable. In the Tribunal's view, the Respondent's reading of article 7 of its Statute is excessively narrow and cannot be accepted by the Tribunal. The Tribunal finds that it is for an applicant, in the first instance, to decide whether the outcome of the recourse before the JAB has been favourable to him or her. In this case, it is not irrational for the Applicant to hold the view that the outcome has been unfavourable, because, even though on the whole, his claim was upheld, the compensation granted was, in his opinion, insufficient.

VIII. The Tribunal considers that, inasmuch as the Applicant may lawfully contend that the Secretary-General's decision has been unfavourable on that ground, the application is receivable under article 7, paragraph 3 of the Tribunal's Statute. It therefore decides to consider the case on its merits.

IX. In this respect, the Tribunal finds that the amount of the indemnity recommended by the JAB and accepted by the Secretary-General was reasonable and duly took into consideration the injury caused to the Applicant by the delay of the Administration.

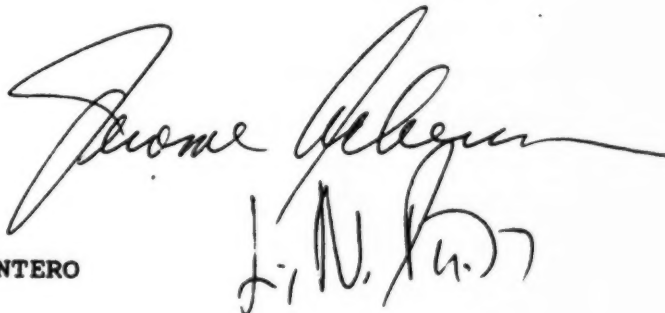
X. As for the plea requesting the initiation of disciplinary proceedings against some UN officials, the Applicant does not have standing to make such a request. The Tribunal will therefore not entertain this plea.

XI. Other issues first raised by the Applicant at a later stage in these proceedings will not be entertained by the Tribunal as they are not germane to the present appeal.

XII. For the foregoing reasons, the application is rejected in its entirety.

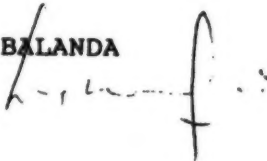
(Signatures)

Jerome ACKERMAN
President

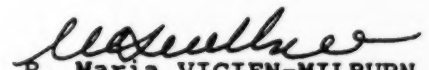


Luis de POSADAS MONTERO
Vice-President

Mikuin Leliel BALANDA
Member



New York, 22 November 1995



R. Maria VICIEN-MILBURN
Executive Secretary



Administrative Tribunal

Distr.
LIMITED

AT/DEC/740
22 November 1995

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 740

Case No. 516: PAPPAS

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President,
presiding; Mr. Mikuin Leliel Balanda; Mr. Mayer Gabay;

Whereas, on 6 January 1994, Anna Mamalakis Pappas, a former
staff member of the United Nations Institute for Training and
Research, hereinafter referred to as UNITAR, filed an application in
which she requested, under article 12 of the Statute of the
Tribunal, the revision and correction of Judgement No. 500, rendered
by the Tribunal on 9 November 1990 and Judgement No. 585, rendered
by the Tribunal on 20 November 1992;

Whereas the Applicant's pleas read, in part, as follows:

"As was the case with Judgement No. 500, the recitation
of the pleas in Judgement No. 584 is woefully incomplete.
Only the introductory paragraph of the pleas is recited and
there is no mention of the specific requests that followed
it. ...

...

... Applicant requests revision of Judgement No. 500
[...] (and corresponding revision of Judgement No. 585 [...] as applicable) to rectify errors, contradictions and lacunae therein ... listed [by the Applicant] in the order of appearance ..."

Whereas the Respondent filed his answer on 20 April 1994;

Whereas, on 25 October 1995, the Applicant filed written observations containing a set of amended pleas;

Whereas, on 2 and 4 November 1995, the Applicant submitted additional statements;

Whereas, on 9 November 1995, the Applicant submitted corrections of errata in her application which were accepted on 22 November 1995;

Whereas the Applicant's principal contention is:

The Tribunal's judgements contain errors, contradictions and lacunae, and the Tribunal's findings of law were based on wrong facts and factual premises.

Whereas the Respondent's principal contention is:

The application for revision is not receivable as it is an improper attempt to reargue matters finally adjudicated upon by the Tribunal in its previous judgements concerning the Applicant.

The Tribunal, having deliberated from 24 October to 22 November 1995, now pronounces the following judgement:

I. The Applicant requests revision of Judgements No. 500 and No. 585, rendered by the Tribunal on 9 November 1990 and 20 November 1992 respectively. In the latter Judgement, the Tribunal has already denied revision of the earlier one.

The revision of judgements is governed by article 12 of the Tribunal's Statute. It reads as follows:

"The Secretary-General or the applicant may apply to the Tribunal for a revision of a judgement on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown

to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement. Clerical or arithmetical mistakes in judgements, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Tribunal either of its own motion or on the application of any of the parties."

The Tribunal notes at the outset that the Applicant's request for the revision of Judgement No. 500 clearly falls outside the provisions of article 12 and, therefore, cannot be entertained at this stage. The revision of Judgement No. 500 was already sought and rejected. A further application for revision of the Judgement, over a year after it was rendered, is barred not only by the language of article 12 but also by the doctrine of res judicata.

11. The Tribunal therefore will only consider the request for revision of Judgement No. 585, in order to determine whether "some fact of such a nature as to be a decisive factor" has become known to the Applicant after Judgement No. 585 was rendered. It will also turn its attention to whether "clerical or arithmetical mistakes ... or errors arising ... from any accidental slip or omission" appear in that Judgement.

In her submission to the Tribunal, the Applicant claims that Judgement No. 585 is "based on, contains and compounds very serious clerical and arithmetical errors and errors of omission and misstatement of fact".

The Applicant never substantiates these claims; all her arguments are aimed against Judgement No. 500, and, therefore, are not to be considered, for the reasons mentioned above.

In this respect, the Tribunal agrees with the Respondent, when he observes that "a perusal of the pleas in the instant case,

and those in the 16 November 1991 Application for revision of Judgement No. 500 which led to Judgement No. 585, reveals that they are substantively the same."

III. In her written observations on the Respondent's answer, submitted on 25 October 1995, the Applicant adds a new plea, which was not included in her initial submission. The Applicant claims that Judgement No. 585 should be considered null and void "due to the jurisdictional defects in the composition of the adjudicating body ..." that rendered the Judgement. This alleged jurisdictional defect consisted, according to the Applicant, of the fact that one of the Members of the Tribunal who rendered Judgement No. 585 was, at the same time, a Member of the Permanent Mission of a Member State to the United Nations.

IV. The Tribunal will give due consideration to this claim in order to determine whether these circumstances could constitute "a fact of such a nature as to be a decisive factor ..." that would warrant a revision of Judgement No. 585 under article 12 of the Statute.

In the first place, the Tribunal notes that article 12 establishes a time limit and bars any request for revision after one year of the date of the Judgement. Judgement No. 585 was rendered on 2 November 1992. The submission challenging the composition of the Tribunal was submitted on 25 October 1995. This, in itself, would be sufficient reason for not entertaining the Applicant's claim on this issue. Nevertheless, the Tribunal wishes to comment on the merits of the claim.

V. The Tribunal recalls that its Members are elected by the General Assembly. When the General Assembly elected the Member in question, it was fully aware of his status and nevertheless voted for his appointment.

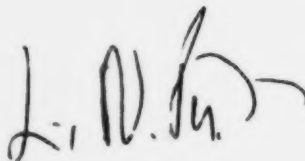
The Tribunal also notes that the conditions of eligibility of its Members are set forth in its Statute and that candidates meeting these requirements are eligible to serve on the Tribunal. The Tribunal does not consider it advisable for members of delegations to the General Assembly of the United Nations to be elected to the Tribunal. However, it finds that, as this view has not been adopted by the General Assembly, no legal consequence can follow that would taint the legitimacy of the Tribunal or render invalid its judgements.

VI. The Tribunal therefore concludes that the requirements of article 12 of its Statute have not been met and that there are no grounds for the revision of Judgement No. 585.

VII. For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding



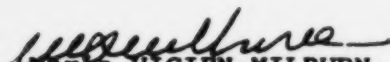
Mikuin Leliel BALANDA
Member



Mayer GABAY
Member



New York, 22 November 1995


R. MARIA VICIEN-MILBURN
Executive Secretary



Administrative Tribunal

Distr.
LIMITEDAT/DEC/741
22 November 1995

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 741

Case No. 796: MIKDASHI

Against: The Commissioner-General
of the United Nations
Relief and Works Agency
for Palestine Refugees
in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Mr. Samar Sen, Vice-President, presiding;
Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 31 January 1994, Samia Mikdashi, a staff member
of the United Nations Relief and Works Agency for Palestine Refugees
in the Near East, hereinafter referred to as UNRWA, filed an
application that did not fulfil all the formal requirements of
article 7 of the Rules of the Tribunal;

Whereas, on 9 May 1994, the Applicant, after making the
necessary corrections, again filed an application requesting the
Tribunal, inter alia, to order:

- "1. [Her] reinstatement to [her] former position before
demotion.
2. UNRWA to issue a letter of apology.
3. Payment of all back-pay due to [her, including]:
 - (a) ... relocation allowance: L.L. 2,000,000
(approximately US\$ 3,500).

(b) ... Senior Manager Allowance: L.L. 4,000,000
(approximately US\$ 7,000).

4. Compensation equal to four years net base salary for the damage to [her] professional reputation, moral and personal suffering, as [she has] been denied the satisfaction of continuing to work in a job of high interest and responsibility, all that due to UNRWA's unjustified and unwarranted treatment, i.e. L.L. 108,000,000 (approximately US\$ 60,000.-).
5. Lawyer's fees: US\$ 5,000.
6. Expenses: US\$ 2,000."

Whereas the Respondent filed his answer on 28 October 1994;
Whereas the Applicant filed written observations on 22 March

1995;

Whereas, on 19 June 1995, the Respondent submitted additional observations;

Whereas, on 1 August 1995, the Applicant submitted additional observations, together with a document;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 1 April 1965, as a Medical Officer "B" at grade 14, on a temporary indefinite appointment, in the Rashidieh Camp Clinic, Tyre Area. On 1 July 1968, she was transferred to the post of Medical Officer "A" in the Ein El Hilweh Camp Health Centre, Saida Area. On 1 October 1980, the Applicant was transferred to the post of Deputy Field Health Officer, grade 17, in the Lebanon Field Office. With effect from 1 April 1981, she was promoted to grade 17. On 1 June 1986, the Applicant was reassigned to the post of Field Preventive Medicine Officer, grade 16, with salary and grade protection. With effect from 1 May 1988, the Applicant was granted a Senior Manager Allowance. On 15 April 1990, she was transferred on special assignment to the post of Medical Officer "B" at the Beirut

Polyclinic Unit, with grade and salary protection, and with effect from that date, the Senior Manager Allowance was withdrawn.

In a memorandum dated 19 March 1990, the Director of UNRWA Affairs, Lebanon, informed the Applicant that a "scientific assignment", in reference to a study on the causes of growth failure among Palestine refugee children under 3 years of age, "will require your travel in the field" and that with effect from 15 April 1990, she would be transferred to the post of Medical Officer at Beirut Polyclinic, with grade and salary protection. In a memorandum dated 21 March 1990, to the Director of Health, UNRWA Headquarters, the Applicant expressed her surprise at receiving notice of a special assignment and transfer, as "the study on growth failure among children 0-3 years has already started in Lebanon Field."

On 2 October 1990, the Field Health Officer, Lebanon, informed the Applicant "your special assignment on subject is to be discontinued and, I expect from you to continue your duties as Medical Officer "B" at Beirut Polyclinic (I)."

On 15 June 1992, the Applicant lodged an appeal with the Joint Appeals Board (JAB) against the decision to transfer her from the post of Field Preventive Medicine Officer to Medical Officer "B". On 19 July 1993, the JAB adopted its report. Its evaluation, judgement and recommendation read as follows:

"III. Competence of the Board

13. The Board submits at the outset that on the face of it this application is barred by efflux of time between the date of the administrative decision to transfer the Applicant and the date of the amendment of Area Staff Rule 111.3 governing appeal procedures and which has broadened the range of decisions to be appealed from to include contestation of decisions other than those of termination and disciplinary measures. However, the Board unanimously resolved to waive time limits applicable in this case and to entertain the appeal within its jurisdiction in accordance with Area Staff Rule 111.3(4) and 111.1(5) respectively, for two reasons: the short span of time between the date of the Applicant's latest transfer and the date of amending Area Staff Rule 111.1

governing appeal submissions and procedures; and more important the continuity of the impact of the administrative decision taken in respect of the Applicant to date while the Applicant (henceforth referred to as Appellant) is still a staff member of the Agency coupled with the special merits of the application (henceforth referred to as the appeal).

...

V. Evaluation and Judgement

14. The Board in its deliberations noted that it is the prerogative of the Administration to transfer a staff member from one post to another so long as the action of transfer is a disciplinary measure or an administrative measure in the interest of the Agency. In this case it is obvious that the action of transferring the Appellant was purely an administrative measure as the transfer was effected with salary and grade protection. All that remains is the action of stopping the Senior Manager Allowance which the Appellant had enjoyed in her previous posts as Deputy Field Health Officer and Field Preventive Medicine Officer.

In this regard the Board has taken note of Personnel Directive No. A/21 dealing with the designation of Senior Managers and Senior Management Allowance and has concluded that this Senior Manager Allowance is given to a staff member only when he is the incumbent of a Senior Manager post.

Therefore, as a Medical Officer which is not a Senior Manager post, the Appellant is not entitled to the Senior Manager Allowance nor can claim it to be an acquired right.

Nevertheless, the Board makes its reservation on the circumstances of transferring the Appellant from a Senior Manager post to the post of a Medical Officer without having shown or mentioned that the action of such transfer is warranted by the interest of the Agency and hence the Board can hardly conceive the propriety of the transfer of the Appellant.

VI. Recommendation

In view thereof, the Board unanimously makes its recommendation to review the decision of transferring the Appellant to the post of Medical Officer with a view to establishing proper reconciliation of the Appellant's status with the Agency in terms of function and/or title."

On 1 October 1993, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed her as follows:

"... You will see that, although the appeal was time-barred, the Board, nonetheless, decided to waive the applicable time limits and to entertain the appeal. The Board also noted that it is the prerogative of the Administration to transfer a staff member from one post to another so long as the transfer was either a disciplinary measure or in the interest of the Agency, but proceeded to express a reservation on the circumstances of your transfer to the post of Medical Officer 'B' on the grounds that the Agency had not explained how the transfer had been justified by the interest of the Agency. Accordingly, the Board recommended that the decision to transfer you be reviewed with a view to establishing proper reconciliation of your status with the Agency in terms of function and/or title.

At the time the transfer was made effective, namely 15 April 1990, Area Staff Regulation 11.1(A) did not provide for the decision to transfer you to be treated as a ground of appeal. Indeed, it was more than a year later on 14 June 1991 that extended grounds of appeal were introduced, and the wording and intent of the amendment was that it should be applied prospectively. I, therefore, cannot agree that the Joint Appeals Board had jurisdiction to entertain your appeal.

Notwithstanding the above, to ensure fairness, the circumstances of your transfer have been reviewed as recommended by the Board. It is on record that on 23 February 1990, the Director of Health wrote to the Director of UNRWA Affairs, Lebanon, concerning the need to study in depth the causes or factors associated with moderate/severe growth failure in infants and young children under three. The Director of Health proposed that this assignment be given to a Senior Medical Officer, preferably one with a post-graduate Public Health degree. You fulfilled all requirements, including holding a Master's degree in Public Health, and were therefore chosen for the position. This shows that the decision to transfer you was not taken arbitrarily but in the clear interest of the Agency, and that you were well qualified for the position."

On 3 November 1993 and again on 4 January 1994, the Applicant wrote to the Commissioner General, requesting reconsideration of her

case. In a reply dated 10 January 1994, the Officer-in-Charge, Department of Administration and Human Resources, UNRWA Headquarters, advised the Applicant, "I confirm that your transfer was in the interest of the Agency and did not result in any demotion whatsoever ... In light of the above, I see no reason to reconsider the previous decision."

On 9 May 1994, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The transfer of the Applicant was a demotion, and hence, a disciplinary measure.
2. The Applicant was never charged with unsatisfactory performance or misconduct.

Whereas the Respondent's principal contentions are:

1. Neither the Applicant nor the JAB has articulated any "exceptional circumstances" which would justify entertaining the Applicant's appeal long after the expiration of the applicable time limits.
2. The Respondent's decision to transfer the Applicant was proper and in accordance with its rules. The Applicant, as a result of her long experience and qualifications, was the staff member best qualified to perform the important task to which she was assigned.
3. The Tribunal should not interfere with the Commissioner-General's discretion in transferring a staff member as long as the transfer is in the interest of the Agency and is not improperly motivated.
4. The Applicant's contention that she was demoted rather than administratively transferred is not supported by the facts and is contrary to the plain meaning of the Respondent's rules.

The Tribunal, having deliberated from 30 October to 22 November 1995, now pronounces the following judgement:

I. The initial question to be considered by the Tribunal is that of receivability.

The Applicant was notified of the new appointment by letter of 19 March 1990, the appointment to take effect on 15 April 1990.

The Respondent made the case to the Joint Appeals Board (JAB) that the appeal was time-barred, as the appeal was not lodged until 15 June 1992. The Respondent also referred to the Area Staff Regulations and pointed out that prior to 14 June 1991, the Regulations did not provide for an appeal against an administrative decision other than for termination of services. The Respondent therefore says that the appeal could not properly have been taken under the Regulations.

II. The JAB's conclusion with regard to waiving the time bar will not be overturned by the Tribunal in this case. In the Tribunal's view, the JAB properly held that the appeal was receivable. Although the appeal was not formally lodged until 15 June 1992, there can have been no confusion on the part of the Administration that the Applicant was questioning the proposal and was dissatisfied with it. This is clear from the Applicant's letter of 21 March 1990. At that time she had no further recourse available.

III. The Tribunal rejects the Respondent's argument in relation to the Applicant's transfer, that, because 'the change in the' Regulations did not occur until 14 June 1991, the Applicant was debarred from appealing against this action. The Tribunal has no hesitation in concluding that it would be unfair to prohibit the Applicant from appealing while her colleagues in a similar position could appeal a similar decision taken after 14 June 1991.

IV. On the substantive issue, the Applicant's complaint relates to what she sees as a demotion. She says that she was downgraded from Field Preventive Medicine Officer, grade 17 to Medical Officer "B", grade 14.

The Respondent says that the decision to assign the Applicant to the new position was made because of the Applicant's qualifications and the importance of the assignment. The Respondent contends that he did not act arbitrarily and that he took the decision in the best interest of the Agency. He refers to Area Staff Regulation 1.2, which provides that staff members are subject to the authority of the Commissioner-General and to assignment to any of the activities or offices of the Agency.

The Respondent refers to the Tribunal's position that it will not interfere with the Commissioner-General's discretion in transferring its staff members if the transfer is in the interest of the Agency and is not improperly motivated.

V. While the assignment which the Applicant was given was clearly of importance and its success a worthy objective, there were, seemingly, unfortunate consequences for the Applicant.

The Applicant contends that she was moved so that her post could be given to another specified individual and she suggests that it was not necessary to transfer her to ensure the success of a project in which she was already involved, and which was well on its way to a successful conclusion.

VI. While the Tribunal notes the Applicant's statements in these matters it does not have to rely on them in reaching a conclusion.

The Tribunal recognizes the Commissioner-General's discretion in the matter of the allocation of staff, but it concludes that, in the absence of more convincing justification, his action must, in this case, be considered unfair and unjust and to have the appearance of arbitrariness.

In transferring the Applicant, consideration should have been given to the matter of her status. She says that she was demoted. The Respondent denies this, but does so in a contradictory way. While saying that she retained her grade and salary level, he also acknowledges that she was notionally at a lower grade. The Respondent also contends that, under the rules, there can be a demotion only if there is reduction in salary.

VII. The Tribunal considers, despite the Respondent's arguments, that the Applicant was clearly placed on a less favourable career path. She was forced to occupy a post which carried a lower grade and even when the special assignment was concluded, she continued to do so. While it is the Tribunal's view that she should not have been assigned to a lower-graded post in the first place, it appears to the Tribunal even more strongly that she should not have been forced to continue in a post at that level.

In relation to the Respondent's argument that demotion carries with it ensuing loss of salary, the wording of the Rules does not necessarily involve such a component. In fact, PD/A/10/Rev.1/Amend.1, paragraph 9.1, states that although demotion "should involve a loss of salary" it also says that "the loss may be minimized". Furthermore, this rule defines demotion as "the transfer of a staff member from his/her post to another post at a lower grade." The Tribunal also notes, in this regard, that while the Applicant's Senior Manager Allowance might not be regarded strictly as salary, the fact that she lost it introduces another element of hardship for the Applicant.

VIII. For the foregoing reasons, the Tribunal orders that:

A. The Applicant be reinstated to her grade 17 post or an equivalent post at grade 17.

B. If the Secretary-General, in accordance with article 9, paragraph 1 of its Statute, within thirty days of the notification

of this judgement, decides, in the interest of the United Nations, that the Applicant shall be compensated without further action being taken in her case, the Tribunal fixes the amount of compensation to be paid to her at three months of her net base salary.

C. In addition, as compensation, the Respondent pay to the Applicant the amount of six months of her net base salary.

IX All other pleas are rejected, including the Applicant's request for costs.

(Signatures)

Samar SEN
Vice-President, presiding

Samar SEN

Hubert THIERRY
Member

Hubert Thierry

Francis SPAIN
Member

Francis Spain

New York, 22 November 1995

Maria Vicién-Wilburn
R. Maria VICIEN-WILBURN
Executive Secretary